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R/W MANUAL CHANGE

RWMC- 195

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PROCEDURAL HANDBOOK
(1984 Edition)

RWPH-____-____-____
TRANSMITTAL#____

TITLE: RIGHT OF WAY ENGINEERING	APPROVED BY:  MARK S. TURNER	DATE ISSUED: NOV - 2 2009 Page 1 of 1
SUBJECT AREA: CHAPTER 6 - RIGHT OF WAY ENGINEERING	ISSUING UNIT: OFFICE OF LAND SURVEYS	
SUMMARY OF CHANGES: Adds new Deed Form RW 6-1(Z) and updates Forms Table of Contents.		

PURPOSE

This manual change adds new Deed Form RW 6-1(Z), "Easement Deed." It is to be used exclusively with railroads.

BACKGROUND

Currently, the manual requires specific restrictions on the use of the airspace below a structure by the Grantor of an Aerial Easement. These restrictions fail to recognize the unique characteristics of, and authority given to, railroad companies in the fulfillment of their roles as common carriers. This Deed clearly defines the State's compatible use rights to construct, protect and maintain the highway facility, while minimizing impacts to railroad operations through deed reservations in favor of the railroad, and applicable only as long as they remain in a common carrier capacity.

EFFECTIVE DATE

Immediately.

MANUAL IMPACT

- Remove the superseded pages and insert the attached pages in the Manual.
- Record the action on the Revision Record.

REVISION SUMMARY

<u>Chapter</u>	<u>Remove Old Pages</u>	<u>Insert New/Revised Pages</u>
	Remove the following in its entirety:	Replace with the following in its entirety:
6 - Forms	Table of Contents (Revised 7/96) -----	Table of Contents (REV 9/2009) RW 6-1(Z) (09/2009)

CHAPTER 6

Right of Way Engineering Table of Contents

FORMS

Form RW No.	Title
RW 6-1(A)	Grant Deed (Individual)
RW 6-1(B)	Grant Deed (Individual)
RW 6-1(C)	Grant Deed (Corporation)
RW 6-1(D)	Grant Deed (Corporation)
RW 6-1(E)	Highway Easement Deed (Individual)
RW 6-1(F)	Highway Easement Deed (Corporation)
RW 6-1(G)	Quitclaim Deed (Individual)
RW 6-1(H)	Quitclaim Deed (Individual)
RW 6-1(I)	Quitclaim Deed (Corporation)
RW 6-1(J)	Quitclaim Deed (Corporation)
RW 6-1(K)	Partial Release of Mortgage (Fee)
RW 6-1(L)	Partial Release of Mortgage (Easement)
RW 6-1(M)	Partial Release of Mortgage (Corporation)
RW 6-1(N)	Request for Partial Reconveyance
RW 6-1(O)	Waiver
RW 6-1(P)	Easement Deed
RW 6-1(Q)	Easement Deed (Corporation)
RW 6-1(R)	Partial Reconveyance Under Trust Deed (Fee)
RW 6-1(S)	Director's Deed
RW 6-1(T)	Director's Deed (Quitclaim)
RW 6-1(S&T)	Sales Delegated to District
RW 6-1(U)	Director's Deed--Land Acquisition Through Inadvertence or Mistake in Legal Description
RW 6-1(V)	Director's Deed--Exchange of Access Openings
RW 6-1(W)	Director's Deed--Access Rights Acquisition Through Inadvertence or Mistake in Legal Description
RW 6-1(X)	Aerial Easement Deed
RW 6-1(Y)	Aerial Easement Deed (Corporation)
RW 6-1(Z)	Easement Deed
RW 6-2(A)	Licensed Land Surveyor Signature Page
RW 6-2(B)	Registered Professional Engineer Signature Page
RW 6-2(C)	Deleted
RW 6-2(D)	Deleted

This deed is to be used exclusively for the acquisition of easements crossing Railroad Property.

EASEMENT DEED

District	County	Route	Postmile	Number

(Enter Vesting Information)

hereinafter RAILROAD, grants to the STATE OF CALIFORNIA, Department of Transportation, a public agency, its successors and assigns, hereinafter STATE, a non-exclusive easement for the purpose of constructing, reconstructing, upgrading, replacing, removing, inspecting, maintaining, repairing and operating an overhead bridge and highway for use as a public crossing, along with all necessary supporting columns, footings and appurtenances thereto (collectively, Structure), together with all abutter's rights of access to and from RAILROAD's remaining property to the Structure, being upon, under, over and across that certain real property in the (Enter name of City, if applicable), County of (Enter name of County) State of California, described as follows:

See Exhibit A, attached.

Said public crossing being considered a compatible public use, within the meaning of California Code of Civil Procedure section 1240.510, which shall not unreasonably interfere with RAILROAD's Interstate Transportation obligations, as regulated by the Surface Transportation Board or by any successor agency.

RAILROAD further grants to STATE the non-exclusive right of ingress to and egress from the easement over and across RAILROAD's remaining property, subject to advance notification and coordination with RAILROAD to ensure safety and the compatibility of the RAILROAD's remaining property for such ingress and egress (which coordination by RAILROAD shall not be unreasonably withheld).

RESERVING unto RAILROAD, its successors and assigns, all rights in and to the airspace at an elevation higher than a plane parallel with and 30 feet above the roadway surface of said Structure as originally constructed, provided, that the use of such space shall not interfere with the enjoyment, safety and compatibility of said easement.

ALSO RESERVING unto RAILROAD, its successors and assigns, the general right to use and enjoy the area of land under said Structure hereinabove described. The general right to use and enjoy said land by RAILROAD, its successors and assigns, shall however, be subject to the following limitations and conditions:

1. No use may be made of the area of land within the easement hereinbefore described which would impair the full use and safety of said Structure, or would otherwise interfere with the free flow of traffic thereon or would unreasonably impair the maintenance thereof.
2. No use may be made of the area of land within the easement hereinbefore described for the manufacture or storage of flammable, volatile, explosive or corrosive substances, and such substances shall not be brought onto said land except in such quantities as are normally required for the maintenance operations of occupants of said land and except as may be transported by rail or

Number

pipelines. Installation of any pipelines carrying volatile substances shall have the written approval of the STATE as to the safety and compatibility with said easement and such discretion shall not be exercised in a capricious or arbitrary manner. The use of any such substances shall be in conformance with all applicable code requirements.

3. No hazardous or unreasonably objectionable smoke, fumes, vapors, dust or odors shall be permitted, which would adversely affect the use or maintenance of said Structure or the traveling public thereon.
4. No building of combustible construction shall hereafter be constructed on the area of land within the easement hereinbefore described. The STATE shall be given the opportunity to review and approve plans for any construction within said easement area 60 days prior to said construction. No buildings, no permanent structures, and no advertising displays, may be constructed within 8 feet of the undersides nor within 15 feet (measured horizontally) of the sides of said Structure without the express written approval of the STATE. The STATE shall have the discretion to determine whether such proposed construction will be inimical to or incompatible with the full enjoyment of the public rights in the easement or against the public interest, but such discretion shall not be exercised in a capricious or arbitrary manner.
5. No drilling, mining, or exploring for any oil, mineral, natural gas, or other hydrocarbons by whatsoever name known that may be within the area of land through the surface or the upper 100 feet of the subsurface of the area of land within the easement hereinbefore described or otherwise in such manner as to endanger the safety of the Structure.

The RAILROAD, for itself, its successors and assigns, hereby waives any claim for any and all damages to the value of RAILROAD's remaining property contiguous to the easement hereby conveyed by reason of the location, construction or maintenance of said public crossing.

In WITNESS WHEREOF, the RAILROAD has caused this instrument to be duly executed this _____ day of _____, 20____.

*(This deed requires that the signatures be notarized.
Those signing must have the authority to grant rights
herein stated.)*

(Name of Railroad Company)

By (Signed)
President

By (Signed)
Secretary

THIS IS TO CERTIFY, That the State of California, acting by and through the Department of Transportation (pursuant to Government Code Section 27281), hereby accepts for public purposes the real property described in the within deed and consents to the recordation thereof.

**IN WITNESS WHEREOF, I have hereunto set my hand
this _____ day of _____, 20____.**

Director of Transportation

*(This deed will be signed by the Director only
AFTER the RAILROAD signs)*

By _____
Attorney in Fact

Number

State of California

ACKNOWLEDGMENT

County of _____ } ss

On _____ before me, _____,
(Date) (Name of Notary Public, Title)

personally appeared _____

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public

Above area for official notary seal

(The above acknowledgement is current to the applicable laws of the State of California for 2009. Some railroad companies may want to provide their own acknowledgement form used by their notary.)

(Attach Exhibit A, as referenced in Deed)